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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 *In the Matter of Search Warrants*
5 *Executed on April 9, 2018*
6 -----x

7 MICHAEL D. COHEN,

8 Plaintiff,

9 v.

10 18 MJ 3161

11 UNITED STATES OF AMERICA,

12 Conference

13 Defendant.

14 -----x

15 New York, N.Y.
16 May 30, 2018
17 10:30 a.m.

18 Before:

19 HON. KIMBA M. WOOD,

20 District Judge

21 APPEARANCES

22 MCDERMOTT WILL & EMERY LLP
23 Attorneys for Plaintiff
24 BY: TODD HARRISON
25 STEPHEN M. RYAN
JOSEPH B. EVANS

ROBERT S. KHUZAMI
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THOMAS A. McKAY
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Also Present:

SPEARS & IMES LLP

Attorneys for Intervenor

Donald J. Trump, President

BY: JOANNA C. HENDON

LAW OFFICES OF ALAN S. FUTERFAS

Attorneys for Intervenor

The Trump Organization

BY: ALAN S. FUTERFAS

ELLEN RESNICK

MICHAEL AVENATTI

Attorney for Interested Party

Stephanie Clifford a/k/a "Stormy Daniels"

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(Case called)

THE DEPUTY CLERK: Counsel, please state their appearances.

MS. MAIMIN: Good morning, your Honor. Rachel Maimin, Thomas McKay, Andrea Griswold, and Nicholas Roos for the government.

THE COURT: Good morning.

MR. HARRISON: Good morning, your Honor. Todd Harrison, Steve Ryan, and Joseph Evans for Michael Cohen.

THE COURT: Good morning. And good morning, Mr. Cohen.

MS. HENDON: Good morning, your Honor. For the president intervenor, Joanna Hendon, Chris Dysard, and Reed Keefe.

MR. FUTERFAS: Good morning, your Honor. For Trump Organization, Alan Futerfas and Ellen Resnick.

THE COURT: Good morning.

MR. AVENATTI: Good morning, your Honor. Michael Avenatti on behalf of proposed intervenor, Ms. Daniels.

THE COURT: Good morning.

I will begin by seeking the government's update on its production of material.

MS. MAIMIN: Yes, your Honor.

As reflected in the report of the special master dated yesterday, we completed our rolling production of material to

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1 Mr. Cohen and the special master on May 22 with the exception
2 of three items, namely, two BlackBerries that Quantico is still
3 working on getting into and the contents of a shredding machine
4 which we expect to produce within two to three weeks.

5 THE COURT: Very good.

6 Do you have any idea of the possible volume of
7 materials that represents?

8 MS. MAIMIN: The BlackBerries we can't be certain
9 because we are not in them, so we can't tell the volume of
10 electronic material. I don't believe the contents of the
11 shredding machine are voluminous at all.

12 THE COURT: Okay. Thank you.

13 Mr. Cohen's production of portions of material to the
14 intervenors, who would like to address that?

15 MR. HARRISON: I will address that, your Honor.

16 THE COURT: Mr. Harrison.

17 MR. HARRISON: Thank you, Judge.

18 So as the court is aware, the court originally set
19 this date as a control date for ten business days after we had
20 received everything. We have been receiving rolling
21 productions from the government. As you heard, our last
22 receipt of materials was on May 22. There are still some
23 outstanding items, but we have been tackling things as soon as
24 they come in. We have got people working diligently on them,
25 your Honor.

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1 Just to run quickly through the process of what we
2 have done, the first thing we did was make sure all the parties
3 were on the same page as to control numbers, and that required
4 us to take the data from the government, run it through our
5 systems, assign control numbers to everything, and then give a
6 copy of that back to the government so they had control numbers
7 and a copy to the special master, as well. So that was
8 something that took some time and effort on our part.

9 Subsequent to that or at the same time, we received
10 over 3.7 million files from the government, your Honor. We
11 have gone through about 1.3 million of those, so about a third
12 of them. So we are really tackling this diligently, and we are
13 making pretty good progress on that.

14 Some of that initial time was spent on processing and
15 uploading all that data, the large amounts of data, and then we
16 tackled it and started reviewing it.

17 We have made six sets of privilege designations to the
18 special master so far, and at the same time we have been
19 searching for and producing -- making productions to lawyers
20 for the president and lawyers for The Trump Organization. So
21 that's also a process that we have to go through that we have
22 people working on. We have made nine productions so far to the
23 lawyers for the president and The Trump Organization. So
24 that's just taken a lot of time and effort, Judge. We have got
25 people working all night, weekends, etc., etc. So we are

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1 making pretty good progress.

2 THE COURT: Can you give me a feeling for the volume
3 of documents for each production you mentioned now.

4 MR. HARRISON: For each production that we have
5 received from the government, your Honor?

6 THE COURT: That you received and reviewed.

7 MR. HARRISON: Well, we have received about 3.7
8 million files from the government, your Honor, and we have gone
9 through about 1.3 million of them, so we are about a third of
10 the way through the materials that we have received from the
11 government.

12 THE COURT: All right. Is there any distinction
13 between how difficult it is to review one production as opposed
14 to another?

15 MR. HARRISON: Yes. Certainly, Judge. The hard copy
16 productions are relatively easy to review. The mobile data,
17 which there has been a lot of, we have received information
18 from 13 separate mobile devices. That takes a long time to
19 upload. It takes a long time for us to review because of the
20 format of the UFED reports that we received from the government
21 in relation to mobile devices. So that's been the majority of
22 the information so far, and that is the most difficult to
23 process and to review, but we have gotten through a lot of
24 those devices already.

25 There are also, we received 19 digital media devices,

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1 like hard drives, thumb drives, and things like that. That is
2 easier to upload and easier to review than mobile devices, but
3 still, you know, a somewhat laborious process, your Honor.

4 THE COURT: By approximately what point in time do you
5 expect to have reviewed the remainder of the files the
6 government has already sent you?

7 MR. HARRISON: Based on the volume that we have gotten
8 so far, Judge, and the fact that we have gotten through about a
9 third of it, I estimate -- and it's a little bit hard to
10 estimate, but we estimate that we will be done fully with the
11 review approximately mid July. So we were going to suggest to
12 the court if you wanted to put control date on for 30 days from
13 now, that might be a good idea.

14 THE COURT: Let me hear from the government as to the
15 reasonableness of this proposed deadline.

16 MS. MAIMIN: We don't believe that this is a
17 reasonable deadline. As the defense counsel just stated, the
18 material is already loaded. Our production was complete as of
19 May 22. The UFED reports are actually produced in that format
20 because they are easy to review and are in a format that
21 facilitates a quicker review. One of our concerns, as the
22 court is aware from the beginning, is delay, and that is an
23 unreasonable delay.

24 THE COURT: What, in your view, would be reasonable,
25 given your familiarity with the material?

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1 MS. MAIMIN: Mid June, your Honor.

2 THE COURT: All right. Now, as counsel has pointed
3 out, the reason for this conference initially was to see
4 whether the special master review is proceeding almost as
5 quickly as a taint team review would or whether it is taking
6 much longer. It sounds as if it is taking much longer and as
7 if we may have to revert to the taint team unless Mr. Cohen's
8 lawyers can put enough in the way of resources into this to be
9 finished with the current production by mid June.

10 MR. HARRISON: Well, Judge, we will do whatever we
11 have to do, but I will say that that's an unreasonable deadline
12 the government has set. And if the government was reviewing
13 this stuff, they wouldn't have been through it in this amount
14 of time either. And the government has not proffered any
15 reason why they think that our date is unreasonable. They just
16 think it is unreasonable because they want the stuff faster,
17 and I understand that, but we are moving heaven and earth. We
18 have people working all night. We have people sleeping on
19 couches in our offices. We have people who worked all through
20 the Memorial Day weekend. I had an associate yesterday who
21 felt a tremor in his hand from lack of sleep. I had to send
22 him home late last night. He came back at 7:30 this morning.
23 We are working around the clock.

24 The government knows that this stuff takes time to
25 review. They know what they have given us. They know the

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1 types of media and things that they have given us. They know
2 that this takes time to review. Whatever date we say, Judge,
3 they were going to say they want it sooner than that, say our
4 date was unreasonable. So I don't think they have really
5 proffered any reasons as to why our suggested date is
6 unreasonable, and I can assure the court that we are working
7 around the clock. We are working as fast as we can. This
8 stuff takes a while to get through.

9 THE COURT: How many lawyers are working on this
10 full-time?

11 MR. HARRISON: 15, your Honor.

12 THE COURT: Full-time?

13 MR. HARRISON: 15 plus two, yes, data folk, two data
14 specialists.

15 THE COURT: And they are all working full-time on
16 this?

17 MR. HARRISON: Yes, Judge.

18 THE COURT: Ms. Maimin.

19 MS. MAIMIN: Your Honor, as I mentioned before, so
20 much of the time -- and I think defense counsel said this,
21 too -- that caused delay initially was the loading of the
22 documents. That is complete. We can see that the special
23 master is reviewing material quite expeditiously as it is
24 received, and we believe that Mr. Cohen and the intervenor
25 should be held to the same standard.

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1 THE COURT: I think that's correct. The special
2 master is reviewing everything quite quickly, and I think that
3 counsel could do that if they put enough of the right type of
4 resources into it. So by mid June you need to have finished
5 the balance of the production that you have to date.

6 MR. HARRISON: I understand, your Honor. I will just
7 point out that we have a lot of other tasks that the special
8 master doesn't have. The special master is doing a great job,
9 working very diligently, but we also have to do searches for
10 the lawyers for the president and searches for lawyers for The
11 Trump Organization, make productions to them. As I mentioned,
12 we had to spend a certain amount of time making sure that
13 everybody was on the same page with control numbers, so we had
14 to run all the data, give it control numbers, and give a copy
15 back to the government, give a copy of that to the special
16 master, so everyone is on the same page. So we have been sort
17 of the central repository for everything, which we are not
18 complaining about, but there are a lot of extra tasks that we
19 have and that the government doesn't have and that the special
20 master doesn't have. So there is a lot of other stuff that we
21 have to do.

22 THE COURT: Much of it you have already done.

23 MR. HARRISON: A lot of that has already been done,
24 Judge, but the review itself just takes time. It takes time.

25 THE COURT: Okay. Mid June is the date.

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1 Now, did the government say that you have handed over
2 everything other than two types of material?

3 MS. MAIMIN: Yes, your Honor, two BlackBerries and the
4 contents of the shredder.

5 THE COURT: Okay. If you had Mr. Cohen's assistance,
6 could you get right into the BlackBerry?

7 MS. MAIMIN: I'm not certain, your Honor. We are
8 working through that. But it is my understanding that these --
9 that Mr. Cohen may not have the necessary information to get
10 into the BlackBerries at this time.

11 MR. HARRISON: Judge, those are really old items.
12 There may not even be any information or any relevant
13 information on them, and we don't have any information to
14 assist the government in that.

15 THE COURT: All right. Is there any way of dating
16 them, where they were kept, in his office or home or hotel,
17 Mr. Harrison?

18 MR. HARRISON: I'm sorry. I couldn't hear you, your
19 Honor.

20 THE COURT: Is there any way of dating, D-A-T-I-N-G,
21 the material in the BlackBerries? You say it is very old. Can
22 you give me any more than that?

23 MR. HARRISON: Let me make an effort, Judge. Hang on
24 one second.

25 (Mr. Harrison and Mr. Cohen confer)

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1 MR. HARRISON: Judge, I have had this discussion
2 before, but I just wanted to double check. So our best
3 estimate is that those devices are at least eight years old,
4 and we believe that one of them, maybe both of them, belong to
5 Mr. Cohen's wife. And we are talking about the two BlackBerry
6 devices, as I understand.

7 THE COURT: Has the government attempted to have
8 Mr. Cohen's wife assist in opening them?

9 MS. MAIMIN: No, your Honor. We were not aware that
10 Ms. Cohen may have owned the BlackBerries. But we are happy to
11 work with defense counsel to see if that would facilitate
12 production.

13 THE COURT: It would have been helpful if Mr. Cohen's
14 lawyers had given the government this information some time
15 ago.

16 MR. HARRISON: Sorry. Just so it is clear, we don't
17 have any information to give them. We had this discussion with
18 the government very early on. We gave them all of the
19 information related to those issues that we could. We don't
20 have any more information to give them. We haven't been
21 holding anything back from them.

22 THE COURT: Ms. Maimin said that she just learned that
23 the BlackBerries may belong to Mr. Cohen's wife.

24 Am I right?

25 MS. MAIMIN: Yes. I don't believe we were previously

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1 aware of that.

2 MR. HARRISON: I do believe we had discussion about
3 that early on, Judge. We might not have been sure. In fact, I
4 don't know that we are 100 percent sure right now, as I
5 indicated, that those are Mr. Cohen's wife's. That's our
6 belief. That's our best guess. They are so old that we don't
7 know for sure.

8 THE COURT: All right. Would any of the intervenors
9 wish to be heard on document production?

10 MS. HENDON: Your Honor, I would just say that, from
11 the perspective of the president, the rate at which we see the
12 government providing material to Mr. Cohen and Mr. Cohen
13 providing it to us, we are very satisfied and pleased with that
14 and the rate at which we are receiving material and able to
15 make our privilege designations, and we remain very grateful to
16 the court for implementing this process.

17 THE COURT: Thank you.

18 MR. FUTERFAS: Your Honor, I would just echo those
19 remarks. When you receive the materials and start going
20 through it, you see how intensely you do have to look at it to
21 make real privilege reviews. We are making those privilege
22 notations in a very, very limited, narrow, careful scope, which
23 I think the special master appreciates. But when you get into
24 that process, you see how much work that Mr. Cohen's lawyers
25 are doing, and we appreciate and know how hard they are working

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1 to accomplish this process, and we also are appreciative to the
2 special master for her role. She has been very helpful in
3 moving this forward. So I would add that.

4 THE COURT: Very good. Okay.

5 Mr. Avenatti has asked that I address your pending *pro*
6 *hac vice* motion. Mr. Cohen's lawyers ask that it be held in
7 abeyance to the extent that the motion to intervene is also in
8 abeyance.

9 Let me first ask the government, do you still have a
10 position on this or do you take no position on either motion?

11 MS. MAIMIN: We take no position on the *pro hac vice*
12 motion; and, as stated in our letter to the court, we are not
13 taking a position at this time on the motion to intervene.

14 THE COURT: All right.

15 Mr. Avenatti, I will be glad to hear you. I have your
16 motion and your affidavits.

17 MR. AVENATTI: May I approach the podium, your Honor?

18 THE COURT: Yes.

19 MR. AVENATTI: Your Honor, thank you.

20 I am not going to repeat what has been stated in the
21 papers as well as the supplemental affidavits that have been
22 filed with the court.

23 Let me first address the motion to intervene. We have
24 no issue and we agree with the government that that should be
25 held in abeyance. We are continuing to have communications

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1 with the government as to whether it will ultimately be
2 necessary for us to intervene.

3 Part of the issue, your Honor, or one of the issues
4 that bears on that is an item that we requested be taken up in
5 the agenda relating to these audio recordings that we have
6 become aware of that may reflect attorney-client privileged
7 communications between my client and her former counsel,
8 Mr. Davidson.

9 THE COURT: What is your information on that? You
10 have alluded to it in general, but --

11 MR. AVENATTI: Your Honor, I received a call last week
12 from a member of the press who asked me to comment on an audio
13 recording that the member of the press had evidently heard. It
14 was an audio recording between Mr. Cohen and Mr. Davidson, my
15 client's former counsel. During that discussion, Mr. Davidson
16 disclosed attorney-client privileged communications that he had
17 with my client.

18 Needless to say, this was a very disturbing call for
19 me to receive, asking for comment on (a) an audio recording
20 that appears to have been made by Mr. Cohen without permission
21 by Mr. Davidson from all indications, and (b) why would
22 Mr. Davidson be communicating with Mr. Cohen about
23 attorney-client privileged communications that he was having
24 with Ms. Clifford? And why would that then be recorded? And
25 why would a member of the press be provided access to that

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1 recording?

2 Now, there are only two places, by my estimation, your
3 Honor, that that could have been or two sources for that
4 information:

5 One, it would have to be the F.B.I. or the U.S.
6 Attorney's office. They would have access to it if it was
7 obtained in the raid. I don't believe for one moment, your
8 Honor, that either of those two organizations or entities
9 provided that information to this reporter. I would be
10 shocked, based on my workings with the U.S. Attorney's office
11 over the last few weeks and how cooperative those
12 communications have been, if anyone from their office would
13 have leaked that to the press. I would be absolutely shocked.

14 So, therefore, that had to have come, from our
15 estimation, your Honor, from Mr. Cohen or someone associated
16 with Mr. Cohen who provided that to the press recently in an
17 effort to paint a false narrative about my client or
18 Mr. Davidson or for some other reason.

19 But, your Honor, it makes no sense to me as to why a
20 recording would have (a) been made, (b) why Mr. Davidson would
21 have disclosed attorney-client privileged communications
22 without the consent or knowledge of my client -- and I can
23 assure you, your Honor, that my client at no point in time
24 waived the privilege or informed Mr. Davidson that such
25 information could be provided to Mr. Cohen -- and, lastly, your

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1 Honor, it is very disturbing to me that I don't have access to
2 the recording. I don't know -- my understanding is, from what
3 I was told, there are other recordings between Mr. Cohen and
4 Mr. Davidson relating to my client and attorney-client
5 privileged information.

6 Obviously we want to take steps, your Honor, to
7 protect this information. We don't want it provided to the
8 press. We need to be able to make a determination ultimately
9 as to whether to waive privilege relating to communications
10 between my client and Mr. Davidson. But as you might imagine,
11 your Honor, all of this was very surprising and disturbing to
12 me, as Ms. Clifford's current counsel.

13 THE COURT: You are essentially participating in this
14 proceeding. It seems to me you have no standing to make these
15 points unless you want to intervene.

16 MR. AVENATTI: And, your Honor, I understand that. I
17 am only providing that by way of background to tell you that we
18 are happy to delay our motion to intervene, in accordance with
19 the request by the government, as we work through these issues.
20 But sooner rather than later, that's going to have to be teed
21 up, especially if we continue to learn of potential
22 attorney-client privileged information that was provided by
23 Mr. Davidson to Mr. Cohen. That's my only point, your Honor.

24 THE COURT: All right.

25 MR. AVENATTI: Your Honor, as it relates to the *pro*

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1 *hac vice* application, your Honor, it is highly unusual for such
2 an application to be denied. I'm sure your Honor is well aware
3 of that. It is highly unusual for there to be opposition to
4 that application. I have had the benefit of reading the
5 opposition to the application. A lot of it relates to matters
6 that are completely irrelevant to these proceedings, have
7 nothing to do with these proceedings.

8 The argument relating to the release of the
9 information concerning Mr. Cohen, there has been no linkage
10 between that information and this proceeding, your Honor.
11 There is no allegation that that information has anything to do
12 with this proceeding whatsoever. This proceeding, currently
13 it's not a criminal case. It is not a civil case *per se*. It
14 is an "*in re*" proceeding relating to the seizure of documents.

15 Furthermore, your Honor, any claim that somehow
16 extrajudicial statements have had any bearing on this matter or
17 have any potential bearing on this matter, your Honor, I do not
18 believe those arguments are well taken for the following
19 reason: There is no jury in this proceeding. There is no
20 trial in this proceeding. This proceeding is a proceeding,
21 like I just stated, about documents and how documents are going
22 to be handled and how particular privilege issues are going to
23 be addressed by way of a special master, etc. Your Honor
24 ultimately makes the determination, together with
25 recommendations from Judge Jones, relating to how those

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1 documents are to be addressed and how those documents are to be
2 handled. Nothing that may be said in the press could
3 potentially have any bearing on any of those decisions. Your
4 Honor has been on the bench for a very, very long time. This
5 is not the first high-profile case your Honor has handled by
6 any stretch of the imagination. Your Honor is used to handling
7 high-profile matters. Your Honor is used to have extensive
8 media coverage relating to those matters. So nothing that
9 could be said in connection with any statements outside of this
10 courtroom could have any bearing on your Honor's ultimate
11 determination.

12 Now, as it relates to my fitness, I have never been
13 disciplined by any bar organization in the United States, no
14 state bar disciplinary record whatsoever. I have been an
15 exemplary member of the bar for 18 years. I have practiced
16 around this country in various state and federal courts. I
17 have tried cases in no fewer than nine different states. I
18 have an exceptional track record.

19 And if your Honor would like to hear me address any
20 particular statements or allegations from Mr. Cohen's counsel
21 as to why my *pro hac* should not be granted, I would be more
22 than prepared to address those, your Honor.

23 THE COURT: Granting your motion *pro hac* doesn't, as
24 you know, give you a roving ability to bring up anything you
25 wish in connection with this matter. You would be in here to

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1 protect your client's rights. To the extent that the special
2 master might become involved in reviewing purportedly
3 privileged materials and making a determination in consultation
4 with you, the parties have been sharing the cost of the special
5 master 50/50. In reviewing the material from the JAMS
6 arbitration, that left some question in my mind about whether
7 you would in fact share something that you say you will share.

8 MR. AVENATTI: Well, your Honor, let me put the
9 court's concern at ease. There is no question whatsoever, your
10 Honor, that if the special master spends any time working on
11 anything relating to Ms. Clifford, we are more than happy to
12 pay the special master's fees and costs associated with that.
13 If need be, we are happy to put a retainer up of whatever the
14 special master deems appropriate.

15 I noted in the statement filed by the special master,
16 Judge Jones, she is billing at \$700 an hour, which I found to
17 be incredibly reasonable, your Honor. Based on her experience,
18 not only on the bench but as an attorney, I thought that was
19 exceptionally low, quite honestly, at least based on my
20 experience with New York and Los Angeles rates.

21 So, again, your Honor, let me put the court at ease.
22 We will be happy to advance whatever retainer the court deems
23 appropriate, depending on how much time is estimated as it
24 relates to reviewing those documents. Again, it is tough for
25 us to say, because we don't know how many audio recordings

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1 there are. We don't know how much information was provided.
2 We are basically flying blind, your Honor.

3 THE COURT: Thank you.

4 Would you like to respond, Mr. Ryan?

5 MR. RYAN: Thank you, Judge.

6 Judge, this proceeding is about keeping confidential
7 privileged information of the President of the United States,
8 of Mr. Cohen, of the lawyers who have given advice to
9 Mr. Cohen, and it is being turned on its head by Mr. Avenatti.

10 When he was here on April 26, he got up and spoke
11 three different times. Not once did Mr. Cohen's lawyers rise
12 to address his *pro hac vice* motion or the motion to intervene,
13 not a word.

14 The reason I rise today is because I have never seen
15 an attorney conduct himself in the manner that Mr. Avenatti
16 has. Earlier this month, he deliberately took information that
17 he knew was nonpublic, confidential information that was about
18 my client's bank records, that were likely -- almost an
19 ineluctable conclusion that came from a SAR report. Those SAR
20 reports cannot be made public by the law enforcement officials
21 or by the banks who handle them. He published that information
22 gratuitously. He intended to prejudice and cause harm to my
23 client, and he did. He succeeded in that. The court would
24 have to take judicial notice of the volume of media attention
25 that was then devoted to it. But what Mr. Avenatti did in

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1 releasing those records was entirely reckless and improper.

2 The second thing that Mr. Avenatti did in that same
3 release is he improperly released the bank records of a
4 gentleman living in Tel Aviv and he improperly released a
5 Canadian aid worker, a distinguished civil servant of the
6 Canadian government, and his Toronto bank account. It was a
7 drive-by shooting of anyone named Michael Cohen that he could
8 come up with the information.

9 And in the two things that he did, we came back the
10 next day intending to raise it to the court because we had
11 never seen anything like this. I have practiced law for 37
12 years, and I have never risen to oppose the *pro hac vice* motion
13 of an attorney to practice law. And Lord knows there are
14 people who I would rather not have been against in that time.
15 This is not -- the event that he is sidestepping is his
16 intentional, malicious, and prejudicial release of that
17 information.

18 Now, what have we learned since that came out? Within
19 the day that I was actually filing the motion, the second day,
20 I had spoken to the Canadian aid worker, and we were able to
21 obtain the clarity that his records had been done. We were
22 able, actually through the press, to obtain the Israeli
23 newspaper article. We never spoke directly to that gentleman.
24 I spoke directly to the man in Tanzania, is outraged that his
25 records have been released.

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1 On the same day, the Treasury inspector general
2 indicated there would be an inquiry by the inspector general's
3 office as to the likely release of the SARs reports. So that
4 investigation is still going on.

5 Subsequent to that, your Honor -- and we put this in
6 the record to you -- there was an extraordinary *New Yorker*
7 article that quoted apparently, according to this press report,
8 the individual who had released it, who showed in his comments
9 that he knew that he had violated the law in releasing it. And
10 of course no one in the press printed those bank records of my
11 client until Mr. Avenatti released it. And I'm going to put
12 on -- upon information and belief, my phone rang off the hook
13 the day before during the day that that release was done. He
14 released that document under embargo to at least three
15 different entities.

16 So if we want to talk about leaks to the media, that
17 document was made available to a television network and print
18 journalists to prepare their stories for his release that
19 night. It was a premeditated drive-by shooting of my client's
20 rights. That's why we are here today raising this issue.

21 Now, what have we learned subsequently? Within the
22 past week, not something we did, not something we had anything
23 to do with, a United States bankruptcy court has issued a
24 judgment against the named partner's law firm, Avenatti &
25 Eagan, for \$10 million. But in the course of that, your Honor,

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1 I want to read a couple of quotes from other judges about the
2 conduct of that case. I'm going to refer for a moment to the
3 Florida bankruptcy judge, and the court can find the document I
4 am reading from, it is exhibit -- it is document 66-2. I'm on
5 lines 12 and 13. And the bankruptcy judge in Florida addressed
6 the fact that a filing was made in that bankruptcy court that
7 says, "We have an involuntary case that has a stench of
8 impropriety." Okay? This is one of your brethren, a judge of
9 the United States, who had to make that ruling.

10 And who did that filing benefit? Well, it benefited
11 Mr. Avenatti. He was scheduled to have his deposition taken
12 and to provide evidence, and he didn't have to do that because
13 of the stay.

14 So when we look from place to place, what's the
15 importance of that? The importance of it is that Mr. Avenatti
16 cannot keep his agreements. He didn't pay the money that he
17 agreed to pay to settle this matter.

18 We know that he is involved in ways that call
19 attention to himself, his 170 appearances on television -- 74
20 on CNN, according to a recent report. This is about the
21 aggrandizement of a single attorney and his client that, while
22 they may have a motion in this case that should be heard with
23 respect and that we didn't rise to oppose when it first came
24 here, but I'm rising now because I can't believe that we are
25 going to allow this court in the Southern District of New York

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1 to be treated this way. It is not appropriate, your Honor.

2 It shakes me to my boots that, at this point in my
3 career, I have to rise to oppose this sort of conduct, which is
4 laid out. We have not come in here and provided hearsay about
5 a reporter who called him. If we had released those audiotapes
6 to a reporter, it would have been the biggest story in America.
7 It has not occurred. The audiotapes that we have, if any, that
8 pertain to him, under lock and key, they are controlled by my
9 law firm, TO, and POTUS, to the extent that there may be a
10 claim of privilege related to them. I am unaware of any
11 release of an audio file of this kind.

12 Now, let me address this further. I think what he has
13 done today is rise to try and equate our behavior, but we are
14 not squabbling children. And I know sometimes when lawyers get
15 up and they fight like this in front of a court, we look that
16 way, but it's not true. Because this goes to the very heart of
17 what his intention is in this representation. His release of
18 the bank secrecy issues, candidly, he shouldn't be asking us to
19 answer questions, he should be asked to answer those questions
20 himself.

21 I apologize for the vehemence that I have approached
22 this this morning, your Honor. I think this is wrong, and I
23 had to rise. I really didn't want to do this. But it is an
24 issue now put before the court, and I think the appropriate
25 way -- there is a very strange thing going on in terms of any

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1 discussions between the government and him, strange bedfellows,
2 perhaps, but we haven't intervened in that. They said the
3 motion is not here. I would urge you to tell -- hold his
4 application in abeyance because who knows what's going to trick
5 out next week. Who knows what we are going to read, given the
6 role of the inspector general, given the issues in the
7 bankruptcy case. There is really no reason to rule today on
8 this. I would respectfully request the court take the matter
9 under advisement. If we are going to go forward with the
10 motion, then the court will have heard us and you could rule at
11 that time.

12 I thank you for hearing me.

13 THE COURT: Thank you.

14 Mr. Avenatti, do you wish to respond?

15 MR. AVENATTI: Yes, your Honor.

16 That was quite the tale --

17 THE COURT: Let's not comment on it.

18 MR. AVENATTI: Your Honor, what Mr. Ryan just stated
19 to the court, 95 percent of it is without any evidentiary basis
20 whatsoever. There is no evidence that we engaged in any
21 improper conduct relating to the release of any documents
22 relating to Mr. Cohen. There is no evidence of that. And the
23 reason why that is true, your Honor, is because we did not. We
24 did not do anything improper relating to the release of
25 information concerning Mr. Cohen; and, in any event, that has

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1 nothing to do with this proceeding or with the standards under
2 which we can be admitted -- I can be admitted *pro hac vice*.
3 There is no evidence that we did anything improper, your Honor.
4 There is no evidence that the inspector general is
5 investigating me or our release of the information. There is
6 no evidence of that whatsoever. We haven't been contacted by
7 the inspector general. We haven't been contacted by anyone
8 associated with the government. We haven't been contacted by
9 the F.B.I. We haven't been contacted by the Treasury
10 Department. We have been contacted by no one -- no one, your
11 Honor -- relating to anything that we have released.

12 THE COURT: I've a different view from you, from the
13 one you have expressed earlier as to what it is that would
14 subject you to the standards for professional responsibility in
15 this court.

16 In my view, this matter, which is a potential
17 precursor to a criminal trial if charges are filed against
18 Mr. Cohen, I believe that once you are participating in this
19 proceeding, you are subject to New York Code of Responsibility
20 3.6 and the local rule for the Southern District of New York
21 23.1. That means that you would have to stop doing some things
22 you have been doing. If you participate here, you would not be
23 able to declare your opinion as to Mr. Cohen's guilt, which you
24 did; you would not be able to give publicity to documents that
25 are not public. It would change your conduct. That is my only

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1 possible role in doing what Mr. Cohen's lawyers want, which is,
2 to essentially stop in its tracks your publicity tour on TV and
3 elsewhere. And I say "publicity tour" not in a derogatory
4 sense. You are entitled to publicity so long as -- that is, I
5 can't stop you, unless you are participating in this matter
6 before me.

7 So I either want you to participate or not be in the
8 matter at all. I don't want you to have some existence in a
9 limbo, where you are free to denigrate Mr. Cohen and I believe
10 potentially deprive him of a fair trial by tainting a jury
11 pool. I know a jury, if there is one, is way down the road,
12 and memories certainly may fade, but this conduct is inimicable
13 to giving Mr. Cohen eventually a fair trial.

14 So unless you want to move to intervene, in which case
15 you will be subject to all of these rules as well as this
16 court's grievance committee, then I will hold in abeyance your
17 motion *pro hac vice*, and you will not be permitted to use this
18 court as a platform for anything because you won't be a
19 participant in it.

20 MR. AVENATTI: And, your Honor, I don't believe that I
21 have done that, quite honestly, your Honor. And we are the
22 ones that -- I am the one that asked that the agenda item be
23 placed on the agenda for consideration by your Honor, because
24 we don't want to be in limbo *per se*, your Honor.

25 Now, Mr. Cohen's counsel, they are the ones that

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1 oppose the court taking up my *pro hac vice* application today as
2 set forth on the agenda, to be clear. So I ask that the court
3 pass judgment on the *pro hac vice* application today.

4 THE COURT: I don't think that makes you a
5 participant. You would have to --

6 MR. AVENATTI: I agree.

7 THE COURT: You would have to move to intervene, and
8 you have no particular portfolio to intervene here unless it is
9 Ms. Clifford's rights that you are protecting.

10 MR. AVENATTI: Your Honor, I understand that. If the
11 court -- if it is the court's inclination to hold the *pro hac*
12 pending the motion to intervene decision or hearing, so be it.
13 That is more than acceptable to us. We are continuing to work
14 with the government.

15 Your Honor, I will note that now my concerns have been
16 confirmed. Mr. Ryan states there are recordings relating to my
17 client. They are under lock and key. He stated that on the
18 record. So that's now been confirmed. So that raises
19 considerable concerns. I will digest those concerns. We will
20 move appropriately. But if there are recordings of my client's
21 former counsel disclosing attorney-client privileged
22 information, that is of significant concern to me and my
23 client. And we will address that with the government, and we
24 will attempt to arrive at a resolution, your Honor.

25 THE COURT: Very good. Thank you.

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1 Is there anything that we should take up in addition?

2 MS. MAIMIN: Your Honor, we would just respectfully
3 request that the court set a specific date in mid June for the
4 completion of Mr. Cohen's review.

5 MR. RYAN: Your Honor, could I be heard for one
6 minute?

7 THE COURT: Yes.

8 MR. RYAN: I want the court to understand something
9 about the materials that we are dealing with. For example, if
10 there is an hour-long conversation that's one of the 3.7
11 million files, one of our attorneys has to listen to that hour
12 in order to do that or the TO or presidential lawyers have to.
13 I don't think I can maintain quality control of a larger staff
14 of attorneys working on this matter than we currently have. We
15 are burning money at a rate, candidly, that I don't know that I
16 can even increase.

17 THE COURT: I'm prepared to turn this over to a taint
18 team which I view as fair.

19 MR. RYAN: But, your Honor, the 1.3 million records
20 that we are through is a demonstration of how hard we have
21 worked. We are working flat out. And, candidly, it was only
22 on the 22nd that we obtained some of the latest devices that we
23 have gotten and put them up. We are doing, candidly, a great
24 job on this, and I don't think we could do more. I don't think
25 it would be either fair or appropriate. The court faced this

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1 decision of what would be fair and appropriate. The special
2 master process is working perfectly. But an unrealistic
3 deadline of mid June, I don't know that we can make that. And
4 I just want the court to understand, I just don't know that we
5 can do that.

6 I would ask the court's indulgence to not accept that
7 date. Bring us back that date, and let us give you a report.
8 Let the special master report to you on that date of where we
9 are. I hear you that you want this done. And, you know, we
10 have tried to get a process that worked for that, and I just
11 ask the court to consider that in her ruling.

12 THE COURT: What I am considering in addition is the
13 fact that the special master is able to keep up with the
14 production with herself, I believe a partner, and perhaps a few
15 others. They don't have an army. They don't have people
16 sleeping on couches. They are able to speed up in a way that
17 you are apparently not able to do.

18 MR. RYAN: I think I need to address that. The
19 special master can correct this or my colleagues can correct it
20 in the government or the intervening parties.

21 The special master initially was reviewing documents
22 the same way we were, reviewing all of them. At this point I
23 think the special master, while spot-checking things, is
24 actually reviewing the privilege claims that we are making and
25 then some extra things. Her staff is not doing what we are

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1 doing and going through every document that we need to. And we
2 are not going through every document. We are only going
3 through the documents that actually the logic of the search
4 terms tells us to look at. We are actually not looking at the
5 ones that don't trigger that actually may contain privileged
6 information, too.

7 We have already made compromises to meet the court's
8 deadline is I guess the point I am trying to make. We are only
9 reviewing documents that get a hit on the search terms for
10 privilege. And so I think the special master really
11 understands what we are doing, and I would just say that the
12 June 15 date, I just don't know what I'm going to do to get
13 that done. I need more time than that and, I think, I just ask
14 you to consider that in your ruling.

15 MR. FUTERFAS: Your Honor, may I be heard on that?

16 THE COURT: Yes.

17 MR. FUTERFAS: We are very appreciative -- and I think
18 Ms. Hendon would concur with this. We are aware of the work
19 they are doing, and we are appreciative of the care they are
20 giving. They are doing the first run of all of this material,
21 and we are relying on their firm, as is president's counsel
22 relying on them to carefully go through it and cull out and do
23 the search terms and cull it out. So what we get is a very,
24 very small subset. But I am trusting, as I believe Ms. Hendon
25 is, that lawyers are carefully going through that and are doing

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1 the right job and getting it to us. So we very much value this
2 process. And I would say this, that, you know, I think we can
3 all try and their firm can try for a date in mid June. We
4 could come back, and maybe their firm only needs another week
5 or another ten days to get it done, or whatever it might be.

6 But I can assure your Honor that, based on the
7 conversation we have had with the special master, everyone has
8 been working very well together. They are working very
9 diligently. The process is working. We are getting the
10 documents that we should be getting. So is the president's
11 counsel. And we are well on the way to getting this done. So
12 whether it is done on June 15 or it is done on June 20 or
13 whatever it might be, this is a process that's working, and
14 people are working very hard and we are trusted and invested in
15 that process.

16 MS. HENDON: Your Honor --

17 MR. HARRISON: Judge --

18 THE COURT: I understand.

19 MS. HENDON: I'm sorry, Mr. Harrison.

20 If I could just make two points.

21 The first is that, without discussing here what I
22 understand the special master and her small team to be doing, I
23 do believe it is the case that it is something quite different
24 than the McDermott team, and that if you switched tasks between
25 the Bracewell firm and the McDermott team, the McDermott team

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1 would be able to get everything done by June 15 and the
2 Bracewell team would be saying, We need more time. It might
3 make sense -- it's entirely up to your Honor, if your Honor is
4 inclined -- to discuss this point, if your Honor does believe
5 that too much time is being taken -- which is not our
6 observation at all -- with the special master, because I don't
7 feel it is my place to put on the record exactly what I
8 understand that team to be doing and why it is that that team
9 can move at a certain speed. That said, I know your Honor is
10 keen to keep us all on a fast track, and I don't mean to
11 quarrel with that in any way.

12 The second point I wanted to make was simply, on
13 behalf of the president, we endorse fully every argument that
14 Mr. Ryan and his team have made in writing concerning the *pro*
15 *hac* application of Mr. Avenatti. We are glad that your Honor
16 will hold it in abeyance, because it sounds as if your Honor
17 has already done so, but the materials attached to Mr. Ryan's
18 letter of yesterday warrant very careful scrutiny, in my view.

19 And I will just say that when I came into the
20 courthouse this morning, there was a podium in front of the
21 courthouse with eight microphones set up on that podium, and I
22 walked by and nobody looked at me. Nobody wanted to take my
23 picture. And I don't know, but I don't think that podium is
24 there for Michael Cohen or Steve Ryan or for me.

25 Thank you, your Honor.

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1 THE COURT: Thank you.

2 MR. HARRISON: Judge, just to put the point on --

3 THE COURT: You were next, Mr. Harrison.

4 MR. HARRISON: Just to put the point on one quick
5 thing Mr. Ryan said, just so it is clear, I'm picking random
6 numbers, if we get a batch of 10,000 documents and we review
7 the 10,000 documents, we may only designate -- I am just making
8 up numbers here -- 500 of them privileged. So we send those
9 privilege designations to the special master is how it is
10 working, and I think the special master is only reviewing those
11 documents we have designated as privileged. So I think our
12 subset of review is much larger than the special master.

13 THE COURT: I understand. Thank you.

14 Mr. Avenatti.

15 MR. AVENATTI: Your Honor, briefly, I want to just
16 respond.

17 THE COURT: Yes.

18 MR. AVENATTI: Thank you.

19 Your Honor, Mr. Trump had adequate notice of my *pro*
20 *hac vice* application. They could have filed whatever they
21 wanted to file, his counsel could have, in opposition to that.

22 So let me address what was just stated to your Honor.

23 Counsel referenced the court to the attachments that
24 were filed yesterday. Those generally relate to a bankruptcy
25 proceeding concerning a firm that is not at issue in this case,

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1 that has never represented Ms. Daniels, never will represent
2 Ms. Daniels, and is not a firm that I presently work on behalf
3 of in connection with this matter, to be clear.

4 THE COURT: How much of this is a distinction without
5 a difference? You are the named partner in each firm. You
6 operate out of the same office. What's the distinction?

7 MR. AVENATTI: Well, your Honor, I think it's a
8 critical distinction, because that firm has never represented
9 my client.

10 But I would like to address what counsel stated.
11 Counsel is directing the court to a bankruptcy judgment as
12 reason why my *pro hac vice* should not be permitted, counsel who
13 represents Mr. Trump, who has had his own fair share of
14 bankruptcies over the years, and those haven't disqualified him
15 in various contexts, so the irony of that, your Honor, is
16 rather palpable. Furthermore, counsel is referring to tweet
17 messages, I guess, that I sent. Well, we know that her client,
18 her very own client, Mr. Trump, has tweeted about this matter
19 in great detail and has tweeted about Mr. Cohen in great detail
20 during these proceedings, so the irony, your Honor, of that is
21 palpable.

22 Now, let me also address the microphones that are set
23 up in front of the courthouse. If anyone in this courtroom
24 believes that if my *pro hac* is denied those microphones are
25 going to go away or the press that is seated here is no longer

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1 going to attend, they are fooling themselves. Whether I'm in
2 this case or not, this case is going to have a considerable
3 amount of press attention, a considerable amount of public
4 interest, and for good reason, because of the issues in the
5 case and their seriousness as it relates to the President of
6 the United States, your Honor.

7 Thank you.

8 THE COURT: All right.

9 Ms. Hendon.

10 MS. HENDON: Thank you, your Honor.

11 I just would like to respond to the statement that I
12 believe Mr. Avenatti said "that firm" -- referring to Eagan
13 Avenatti or Avenatti Eagan -- "has never represented my
14 client." I don't know how many times he said that. I notice
15 that he put that in an affidavit that he filed with the court
16 last night. That affidavit only has three paragraphs, and it
17 was information in that affidavit that Mr. Avenatti chose to
18 volunteer. No one asked him to put that affidavit in. And
19 paragraph 3(a) states that "The firm of Eagan Avenatti LLP is
20 not the law firm of Ms. Daniels."

21 With the court's permission, I would like to hand up
22 what I have marked as Exhibit 1. We will give copies to
23 Mr. Avenatti and Mr. Futerfas, plaintiff, and the government.

24 MR. AVENATTI: Your Honor, I have no idea what this
25 is.

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1 THE COURT: You don't need to speak yet. I don't
2 either.

3 MS. HENDON: As your Honor may be aware, Mr. Avenatti,
4 on behalf of Ms. Daniels, has two actions pending in federal
5 court -- one in California, which is stayed, and one in this
6 district before Judge Furman. As recently as last week,
7 lawyers from the Avenatti Eagan firm were in communication with
8 the president's counsel concerning the matter pending in this
9 district. You will see that on I think the first e-mail.

10 The second e-mail likewise shows Avenatti Eagan --
11 pardon me, Eagan Avenatti, attorneys or an attorney acting for
12 Ms. Clifford in an action against the president.

13 And the third e-mail from March 2018, just two months
14 ago, is another Eagan Avenatti e-mail sent to counsel for the
15 president -- this one in the California action -- on behalf of
16 Ms. Clifford, and on that e-mail you see that Mr. Avenatti
17 himself bears an Eagan Avenatti e-mail address.

18 Now, I had these materials when I first took the
19 podium this morning to say I had two comments -- one, I endorse
20 Mr. Ryan and, two, you know, I think the McDermott firm has
21 been working as hard as anyone can to get us the document --
22 but I chose not to bring this up. But I think the court should
23 note that Mr. Avenatti did not need to respond to that point.
24 He did not need to put in this affidavit last night. He chose
25 voluntarily to do it, and he was not straightforward with the

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1 court. He was not open with the court.

2 If you read paragraph 3(a) carefully, "The firm of
3 Eagan Avenatti LLP is not the law firm for Ms. Daniels." I
4 don't know what that means, but it appears carefully
5 constructed to create an impression with the court in a matter,
6 frankly, of zero moment in these proceedings.

7 When I was a prosecutor and we would sum up in front
8 of the jury, we would say to the jury: You know, when I
9 elicited that untruthful or misleading statement about that
10 little, tiny point from the defendant on cross, you were
11 probably bored and you were probably wondering, ladies and
12 gentlemen, why did I spend all that time on that little, tiny
13 thing about which the defendant was not candid with you? And
14 the reason I spent time on that -- and, your Honor, the reason
15 I stood up again today -- is because when someone, especially a
16 lawyer, is prepared to be not straight forward and cute and, I
17 would say, misleading with the court on the tiniest of matters,
18 it raises a serious question about how that person, how that
19 lawyer will conduct himself on the more serious matters.

20 That's all, your Honor. Thank you.

21 THE COURT: Thank you.

22 MS. HENDON: I would ask that the court receive what I
23 have marked as Exhibit 1, those three e-mails, as part of
24 today's record.

25 THE COURT: All right. It is currently marked

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1 Intervenor Exhibit 3. We will give it that designation.

2 MS. HENDON: That's fine, your Honor.

3 THE COURT: It is received.

4 Is there anything further?

5 MS. MAIMIN: Yes, your Honor. We would just hope the
6 court could set a date in mid June for the production of
7 documents.

8 THE COURT: Good point.

9 Mr. Cohen's review of the materials currently in their
10 possession, in the possession of counsel for Mr. Cohen, must be
11 completed by June 15, 2018. If it is not, the balance of the
12 materials will go to the taint team which will review them. It
13 is important for the court to balance the slow, deliberate
14 needs of those who are asserting attorney-client privilege with
15 the need for an investigation to go forward.

16 I would like to note to Mr. Avenatti that, until you
17 are admitted here, I don't expect you to stand and be heard
18 here. I have no control over what you do outside. I just
19 wanted to be sure that was understood.

20 MR. AVENATTI: Understood, your Honor. Thank you.

21 THE COURT: All right. Thank you very much.

22 We will have the next conference as soon as the
23 special master decides it is a good time.

24 oOo